

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LESLIE VILLA,

Petitioner,

v.

WILLIAM HUTCHINGS, *et al.*,

Respondents.

Case No. 2:21-cv-02030-ART-VCF

ORDER

In this habeas proceeding under 28 U.S.C. § 2254, the Court appointed the Federal Public Defender (FPD) to represent the Petitioner, Leslie Villa, due to Villa's apparent inability to litigate this case without assistance of counsel. ECF No. 21. The FPD has now filed a notice of appearance. ECF No. 22.

The Court notes that Respondents' pending motion to dismiss (ECF No. 18) is based, in large part, on arguments that the claims in Villa's current habeas petition (ECF No. 7) are unexhausted and lack sufficient factual support. In the interests of justice, Villa will be provided an opportunity to correct these deficiencies with the assistance of counsel.

It is therefore ordered that Respondents' motion to dismiss (ECF No. 18) is denied without prejudice.

It is further ordered that further proceedings are scheduled as follows:

Amended Petition. If Petitioner wishes to file an amended petition in this action, he must do so within 60 days of the date this order is entered. The amended petition must state whether each ground for relief has been exhausted in state court. For each claim that has been exhausted, the amended petition must state how, when, and where that occurred.

Response to Petition. Respondents will have 60 days from receipt of the amended petition (or from the expiry of the period for filing an amended petition if none is filed) to file and serve an answer or other response to the amended

petition.

Reply. Petitioner will have 45 days following service of an answer to file and serve a reply. Respondents will then have 30 days from receipt of the reply to file and serve a response to the reply.

Briefing of Motion to Dismiss. If Respondents file a motion to dismiss, Petitioner will have 60 days following service of the motion to file and serve a response to the motion. Respondents will then have 30 days following service of the response to file and serve a reply.

Discovery. If Petitioner wishes to move for leave to conduct discovery, he must file and serve that motion concurrently with, but separately from, the response to Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for leave to conduct discovery filed by Petitioner before that time may be considered premature, and it may be denied without prejudice on that basis. Respondents' response to any motion for leave to conduct discovery must be filed concurrently with, but separately from, their reply in support of their motion to dismiss or their response to Petitioner's reply. Petitioner will then have 20 days to file and serve a reply in support of his discovery motion.

Evidentiary Hearing. If Petitioner wishes to request an evidentiary hearing, he must file and serve a motion for an evidentiary hearing concurrently with, but separately from, the response to Respondents' motion to dismiss or the reply to Respondents' answer. Any motion for an evidentiary hearing filed by Petitioner before that time may be considered premature, and it may be denied without prejudice on that basis. The motion for an evidentiary hearing must specifically address why an evidentiary hearing is required and must meet the requirements of 28 U.S.C. § 2254(e). The motion must state whether an evidentiary hearing was held in state court, and, if so, identify where the transcript is located in the record. If Petitioner files a motion for an evidentiary hearing, Respondents' response to that motion must be filed concurrently with,

1 but separately from, their reply in support of their motion to dismiss or their
2 response to Petitioner's reply. Petitioner will then have 20 days to file and serve
3 a reply in support of the motion for an evidentiary hearing.

4 DATED THIS 19th day of August, 2022.

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6 ANNE R. TRAUM
7 UNITED STATES DISTRICT JUDGE
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